

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

OPINION AND ORDER

This matter is before the Court on the Plaintiff's Motion to Continue Trial. (Docket # 165.) Oral argument on the motion was heard and concluded on May 31, 2012. (Docket # 169.) The motion was DENIED for the reasons stated on the record and supplemented here.

This case was set for trial and continued twice. (See Docket # 144, 159.) The second continuance occurred in April 2012 and was necessitated by Plaintiff Barbara Brown's hospitalization and uncertain medical condition. Consequently, the Court reset the case for a four-day jury trial commencing on June 5, 2012. (Docket # 160.) On May 21, 2012, Brown filed, *pro se*, a letter from her physician, Dr. Bhaktavatsala R. Apuri, indicating that she was "unable to be in court at this time due to her health." (Docket # 161.) On May 30, 2012, Brown filed, through counsel, the present motion to continue the trial due to her medical conditions, attaching a further letter from Dr. Apuri, in which he opines that Brown "is unable to appear in court on June 5th, 6th, 7th, and 8th," has undergone testing, continues to have chest pain, and is due back in the office at the end of June. (Mot. to Continue Trial Ex. A.)

Whether to grant or deny a motion for continuance is left to the broad discretion of the trial court. *United States v. Withers*, 972 F.2d 837, 845 (7th Cir. 1992); *see United States v. Cruz-Velasco*, 224 F.3d 654, 666 (7th Cir. 2000); *United States v. United Pac. Ins. Co.*, 427 F.2d 366, 373 (7th Cir. 1970). Here, Dr. Apuri’s conclusory statements do not support a continuance of the trial. *See United States v. \$94,000.00 in U.S. Currency*, 2 F.3d 778, 787-88 (7th Cir. 1993) (denying a third continuance, requested on the day of trial, after the subject of a forfeiture proceeding “failed once again to offer more than his doctor’s conclusory statement regarding his infirmity in support of his motion”). Dr. Apuri does not state why Brown is unavailable on the specific trial dates. Moreover, Dr. Apuri’s letter suggests that Brown’s condition is not so serious that she has to be hospitalized. Nor does there appear to be “a sudden change in [her] medical circumstances that required [her] to rush into treatment,” which could warrant a continuance. *Schneider Nat’l Carriers, Inc. v. Carr*, 903 F.2d 1154, 1158 (7th Cir. 1990). And the record leaves unanswered several important questions regarding Brown’s ability to testify in support of her own case or to otherwise attend and participate in the trial. *See Moffitt v. Ill. State Bd. of Educ.*, 236 F.3d 868, 875 (7th Cir. 2001) (holding that district court did not abuse its discretion in dismissing case rather than granting a continuance when, although plaintiff’s condition undoubtedly required treatment, the record left unanswered these important questions).

For instance, it appears Brown could be present for only her testimony rather than the entire four-day trial. Moreover, “no record has been made as to why it was not feasible for [Brown’s] attorney to present her case even if [Brown] was unable to testify.” *Id.* If Brown cannot appear to testify, her previous deposition could arguably be used or she could submit to a video evidentiary deposition addressing any inadequacies in her prior deposition.

As “we will not simply assume that it [is] impossible to go forward in the plaintiff’s absence,” Brown must make more of a concrete showing that she is truly unavailable and why. *Id.* at 875-76. Such a showing has not been made here. Accordingly, Brown’s Motion to Continue Trial (Docket # 165) was DENIED. The Court confirms the Trial Management Conference set for June 4, 2012, at 9:30 a.m., and further confirms that Plaintiff Barbara Brown is to appear in person at this conference.

SO ORDERED.

Enter for the 31st day of May, 2012.

S/Roger B. Cosby
Roger B. Cosby,
United States Magistrate Judge